

No. 16521 ✓

---

United States  
Court of Appeals  
for the Ninth Circuit

---

ELIZABETH B. JOHNSON,

Appellant,

vs.

CHARLES B. MacCOY,

Appellee.

---

Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California  
Central Division

FILED

SEP 25 1959

PAUL P. O'BRIEN, CLERK



No. 16521

---

United States  
Court of Appeals  
for the Ninth Circuit

---

ELIZABETH B. JOHNSON,

Appellant,

vs.

CHARLES B. MacCOY,

Appellee.

---

Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California  
Central Division



## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Appellant's Statement of Points and Designation of Record.....	19
Attorneys, Names and Addresses of.....	1
Certificate by Clerk.....	18
Complaint .....	3
Ex. A—Oral Opinion of Judge Hunt.....	9
Judgment of Dismissal.....	15
Notice of Appeal Filed April 24, 1959.....	16
Notice of Appeal Filed May 15, 1959.....	17
Order on Motion to Dismiss.....	14
Notice of Motion to Dismiss.....	13



## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

MARVIN ZINMAN,  
315 West 9th Street,  
Los Angeles 15, California.

For Appellee:

HAROLD W. KENNEDY,  
County Counsel;

ROBERT C. LYNCH,  
Deputy County Counsel;  
1100 Hall of Records,  
Los Angeles 12, California.





In the United States District Court, Southern District of California, Central Division

No. 1005-58TE

ELIZABETH B. JOHNSON,

Plaintiff,

vs.

CHARLES B. MacCOY,

Defendant.

COMPLAINT FOR DAMAGES FOR VIOLATION OF RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

I.

This is an action founded upon the provisions of 42 U.S.C.A., Section 1983, being a part of an act commonly known as the Civil Rights Act, and jurisdiction is conferred upon this Court by reason of the fact that this is an action pursuant to said Act, to redress plaintiff for violations by defendant of rights conferred upon plaintiff by the Fourteenth Amendment to the United States Constitution, said rights being plaintiff's right under said Amendment to be free from all arbitrary and unreasonable physical restraints; to be free in the enjoyment by her of her facilities; and to be free to earn a living by a lawful calling, all of which rights are guaranteed to plaintiff by said Amendment and all of which rights were violated by defendant, as here-

inafter alleged, acting under color of the law of a state of the United States and under color of an office of said state, as hereinafter alleged. Accordingly, jurisdiction is in this Court to hear and determine this matter because the same is one which arises under the federal law.

## II.

The plaintiff herein resides at Los Angeles, California, within the Southern District of California.

## III.

Defendant herein was at all times herein mentioned a duly qualified and acting judge of the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California (hereinafter called the Municipal Court), which said Municipal Court is a court of limited jurisdiction under the laws of the said state. Each and every act hereinafter mentioned done by the defendant was done by him under color of the law of said state and under color of his office as aforesaid.

## IV.

On or about October 28, 1957, defendant while sitting as a magistrate of said Municipal Court issued a felony complaint charging the plaintiff with violating a law of the State of California, to wit: Section 182, subdivision 1, of the California Penal Code and then caused to be issued a warrant for the arrest of plaintiff for said alleged violation. Pursuant to said warrant, plaintiff appeared in

Division Four of the aforesaid Municipal Court in answer thereto where on November 1, 1957, the entire proceedings referred to in the instant paragraph were dismissed by the Honorable Vernon W. Hunt, a Judge of said Municipal Court. A true copy of the oral opinion of the said Judge Hunt as given by him at the time of said dismissal is attached hereto and made a part hereof as plaintiff's Exhibit "A."

#### V.

The felony complaint referred to in paragraph IV hereof was not presented to defendant for issuance by a law enforcement or prosecutive agency of the State of California nor was said complaint the result of any action on the part of a grand jury of said state or of a grand jury of a county of said state. Said complaint was instead presented to defendant by two private individuals who have no relationship to a prosecutive agency of said state.

#### VI.

On diverse occasions prior to October 28, 1957, defendant had requested of the District Attorney of the County of Los Angeles that the said District Attorney issue a felony complaint against the plaintiff herein for a violation of the penal law referred to in paragraph IV hereof. Said District Attorney at all times did refuse to issue said complaint.

#### VII.

Thereafter, on or about December 23, 1957, defendant while again sitting as a magistrate of said

Municipal Court and acting with full and complete knowledge of the refusal of the said District Attorney of the County of Los Angeles to issue a felony complaint against plaintiff for an alleged violation of the aforesaid section 182, subdivision 1, of the California Penal Code and acting with full and complete knowledge of the proceedings had before the said Honorable Vernon W. Hunt, which said proceedings are referred to in paragraph IV hereof, again issued a felony complaint charging plaintiff herein with violating a law of the State of California, to wit: The said section 182, subdivision 1, of the California Penal Code and again caused to be issued a warrant for the arrest of plaintiff herein for said alleged violation.

### VIII.

The felony complaint referred to in paragraph VII hereof was not presented to defendant for issuance by a law enforcement or prosecutive agency of the State of California nor was said complaint the result of any action on the part of a grand jury of said state or of a county of said state. Said complaint was instead presented to defendant by a single individual who was one of the two individuals who presented the prior complaint referred to in paragraph IV hereof to defendant. The respective complaints referred to in paragraphs IV and VII hereof were identical in every respect except that the complaint referred to in paragraph VII hereof was signed by a single one of the two individuals who signed the complaint referred to in paragraph IV



hereof. Each of said complaints was prepared by individuals who bore no relationship to any prosecutive agency of the State of California.

### IX.

On or about December 23, 1957, acting pursuant to the warrant referred to in paragraph VII hereof, the Sheriff of the County of Los Angeles, through his authorized deputies, requested the plaintiff herein to present herself at his office in the said County of Los Angeles on December 24, 1957. On December 24, 1957, plaintiff did present herself at the office of the said Sheriff and was for a time on said day restrained of her liberty at said place by the said Sheriff, acting pursuant to said warrant.

### X.

In issuing the complaint referred to in paragraph VII hereof and in causing the issuance of the warrant referred to in paragraph VII hereof, defendant did an act of an official nature in the clear absence of any color of jurisdiction to so act and the proceedings so engaged in by him were at all times herein mentioned a nullity. Plaintiff is informed and believes and therefore alleges that defendant issued said complaint referred to in paragraph VII hereof and caused the issuance of the warrant referred to in said paragraph VII in bad faith. Plaintiff is further informed and believes and on that ground alleges that the sole reason for the issuance by the defendant of the aforesaid com-

plaint of December 23, 1957, and the sole reason for causing the issuance of the aforesaid warrant of arrest pursuant thereto was to promote the interests of the two individuals who presented the said complaint of December 23, 1957, and the complaint of October 28, 1957, to him.

## XI.

The restraint of plaintiff referred to in paragraph IX hereof was caused solely, directly and intentionally by the defendant and said restraint violated the rights of plaintiff herein to be free from all arbitrary and unreasonable physical restraints, to be free in the enjoyment of her facilities, and to be free to earn a living by a lawful calling, which said rights belong to the plaintiff herein by virtue of the Fourteenth Amendment to the United States Constitution.

## XII.

As a result of the deprivation of her said rights as aforesaid, plaintiff herein was damaged in the sum of \$25,000.00.

Wherefore, plaintiff prays for judgment in the sum of \$25,000.00; for costs of suit; and for such other and further relief as the Court deems proper.

/s/ MARVIN ZINMAN,  
Attorney for Plaintiff.

## EXHIBIT A

People vs. H. A. Blackman, George Batchelor and Elizabeth B. Johnson, Municipal Court of Los Angeles Judicial District No. 141255. Opinion of Honorable Vernon W. Hunt, Judge presiding in Division 4 thereof. Proceedings of November 1, 1957:

Judge Hunt: "I have given this matter a great deal of careful thought and research on my own, because this matter goes far beyond the individuals who are involved in this particular case. It involves the liberty of everyone in this courtroom and all of our citizens. Now, anything that I say here now does not apply to the individuals who obtained this Complaint. I know nothing about the merits or demerits of this present controversy. I am not passing judgment on it at all. I am not passing judgment on George C. Finn and Charles C. Finn. I do not know the gentlemen. I know nothing about them or what their purpose was in instituting this litigation, but I am concerned, what I am concerned about, is whether or not some unscrupulous, disreputable, dishonorable, irresponsible individual might be able some day if I set a precedent here, that the District Attorney doesn't have to file these cases, might some day be able to have his neighbor arrested on a false charge out of a pure spirit of vengeance and hatred, falsely. This is a tremendously serious thing. The issues at stake here are enormous. To think that any of our good citizens who could some

day be subjected to the mere whim of somebody who wanted to humiliate or embarrass him by filing a Complaint, a false one, and under this Statute, Section 806, Section 813 of the Penal Code as they were amended in 1951, all they would have to do would just simply go over to the Judge and swear to a false Complaint charging his neighbor with murder. Say nothing else, and if this is the law, then if the Judge refused to grant the issuance of a warrant on that Complaint, false Complaint, they would be entitled to go through the District Court of Appeals and get a writ of mandamus compelling the Judge to issue the warrant. I don't think that can be the law of this State. If that is the statutory law, it is unconstitutional.

“Now, we have some sections which I think are quite clear and I don't think we have to hold any statute unconstitutional, because I think all of the statutes have to be read together. First we start out with Section 684 of the Penal Code which says a criminal action is prosecuted in the name of the People of the State of California. Not in the name of Mr. Finn and his brother, but the name of the People of the State of California and that's the way this Complaint has been filed here. It is entitled “The People of the State of California versus H. A. Blackman,” and so forth. It is not entitled Finn versus Blackman. It the People, the whole People of the State of California who are interested in felony prosecutions.

“Then we have the Constitutional Section which



says "The style of all process shall be The People of the State of California and all prosecutions shall be conducted in their name and by their authority." Not by the authority of some irresponsible individual. I am not saying the Finns are irresponsible. I say at the outset I am not referring to them. I can conceive of a situation where some person might file a perfectly proper Complaint, an honest one, a true one, not talking about that, because if we permit one to file, then we will have to permit them all to file it, and we will have no way of determining whether they are false or not until after they have been arrested, thrown in jail, out on bail if they get bail and in a murder case they wouldn't even get it, and if they had a \$5,000.00 bail put on them, as was put on them in this case, it would cost them a \$500.00 bail premium before they ever got out of jail just to find out whether they are innocent or not.

"All right, then we proceed to the Government Code. By the way, the Constitutional Article is Article 6, Section 20. We will proceed now to the Government Code which tells us what the District Attorney's function is, and I think it is very clear. "The District Attorney shall institute." That means just what it says. Begin, proceed, institute proceedings before the Magistrate before the arrest of persons charged with or reasonably suspected of public offenses when he has information that such offenses have been committed." This has not been instituted by the District Attorney. It was instituted by Mr.

Finn and his brother. That's Government Code Section 26501. I feel that in requiring that all criminal sections must be prosecuted in the name of and by the authority of the People of the State of California, and that the District Attorney shall be the person to exercise that authority by instituting proceedings before the Magistrate, the framers of the Constitution and the Legislators must have had in mind the safeguards necessary to protect innocent citizens from being falsely accused by irresponsible or unscrupulous individuals and being deprived of their liberty by being arrested on a warrant obtained on a false Complaint filed by such irresponsible or unscrupulous individuals who know nothing about law and may be interested only in harassing and humiliating the accused person. If any of our present Statutes can be said to permit criminal proceedings to be instituted by such individuals, it is the opinion of this Court that they are unconstitutional and void.

“I would refer you to the case of Fitch versus Board of Supervisors, 122 Cal., 285 at 289. There is some language in the District Court of Appeal of this District, the Second Appellate District, to the effect that the trial and punishment of felonies is an activity in which the people of the entire State are interested, and such matters which require governmental attention must be handled by the State through its duly designated officials, and not by unauthorized individuals who may seek to use the process of the Courts for their personal purposes.

I refer you to the case of Sloan versus Hamilton, 81, Cal. App., 90. The Supreme Court, People versus McDaniels, 137 Cal., 192, at 198, "All prosecutions are by the State which is the single entity. It may choose the form and demeanor for what particular offense it will prosecute the citizens for a violation of the Criminal Law." In other words, these individuals filing these things probably get themselves in the wrong Court half the time and they'll file the wrong charges. They won't know anything about law. It is just unthinkable that this sort of thing could exist in our Nation.

"As far as this Court is concerned, it is not going to. The motion to quash the warrant is granted. The Complaint is stricken and dismissed, and the defendants are discharged."

[Endorsed]: Filed October 21, 1958.

---

[Title of District Court and Cause.]

### NOTICE OF MOTION TO DISMISS

To Elizabeth B. Johnson, plaintiff herein, and to Marvin Zinman, her attorney:

You and each of you, will please take notice that on Monday, the 24th day of November, 1958, at 10:00 a.m., or as soon thereafter as counsel can be heard, in the above-entitled court, before the Honorable William C. Mathes, Judge thereof, at the Fed-

eral Building, Los Angeles, California, the defendant, Charles B. MacCoy, will move said court for an order dismissing the above-entitled action against said defendant on the following ground.

That the complaint fails to state a claim upon which relief can be granted.

Said motion will be based upon the pleading heretofore filed and the points and authorities attached hereto.

HAROLD W. KENNEDY,  
County Counsel, and

ROBERT C. LYNCH,  
Deputy County Counsel,

By /s/ ROBERT C. LYNCH,  
Attorneys for Defendant,  
Charles B. MacCoy.

[Endorsed]: Filed November 13, 1958.

---

[Title of District Court and Cause.]

ORDER ON DEFENDANT'S MOTION  
TO DISMISS

This cause having come before the Court for hearing on defendant's motion to dismiss, filed November 13, 1958; and the motion having been argued and submitted for decision;

It Is Ordered that defendant's motion to dismiss is hereby granted, with leave to plaintiff to serve and file an amended complaint within twenty days.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail upon the attorneys for the parties appearing in this cause.

March 27, 1959.

/s/ WM. C. MATHES,  
United States District Judge.

[Endorsed]: Filed March 30, 1959.

---

United States District Court for the Southern District of California, Central Division.

No. 1005-58—WM

ELIZABETH JOHNSON,  
Plaintiff,  
vs.  
CHARLES B. McCoy,  
Defendant.

### JUDGMENT OF DISMISSAL

It appearing that on March 27, 1959, the Court ordered the within action Dismissed, with leave to plaintiff to serve and file an amended complaint within twenty days from the date of the Order of



Dismissal, if so advised, and that the plaintiff has failed to offer any amendment within the time so allowed, now, therefore, upon the Court's own initiative,

It Is Ordered, Adjudged and Decreed that the above-entitled action be and hereby is dismissed.

It Is Further Ordered that this Judgment of Dismissal shall not constitute an adjudication upon the merits (Fed.R.Civ.P., Rule 41 (b)).

It Is Further Ordered that the Clerk this day serve copies of this Order by United States mail upon the parties appearing in this cause.

April 30, 1959.

/s/ WM. C. MATHES,  
United States District Judge.

[Endorsed]: Filed and entered April 30, 1959.

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

With affidavit of service as to Harold W. Kennedy, County Counsel, and Robert C. Lynch, Deputy, 1100 Hall of Records, Los Angeles 12, California.

Notice Is Hereby Given, that Elizabeth B. Johnson, the plaintiff above-named, hereby appeals to

the United States Court of Appeals for the Ninth Circuit from the Order of March 27, 1959, herein, granting the motion of the defendant Charles B. MacCoy to dismiss the complaint.

/s/ MARVIN ZINMAN,  
Attorney for Appellant  
Elizabeth B. Johnson.

Proof of Service by Mail attached.

[Endorsed]: Filed April 24, 1959.

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given, that Elizabeth B. Johnson, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment of dismissal in favor of defendant and against plaintiff heretofore entered herein on April 30, 1959.

/s/ MARVIN ZINMAN,  
Attorney for Appellant,  
Elizabeth B. Johnson.

Proof of Service by Mail attached.

[Endorsed]: Filed May 15, 1959.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the foregoing documents together with the other items, all of which are listed below, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case; and that said items are the originals unless otherwise shown on this list:

Names and Addresses of Attorneys.

Complaint, filed 10/21/58.

Notice of Taking Deposition, filed 11/12/58.

Notice of Motion to Dismiss and Points and Authorities, filed 11/13/58.

Order on Defendant's Motion to Dismiss, filed 3/30/59.

Judgment of Dismissal, filed and entered 4/30/59.

Notice of Appeal, filed 4/24/59.

Notice of Appeal, filed 5/15/59.

Designation of contents of Record on Appeal, filed 5/26/59.

Dated: June 18, 1959.

[Seal]

JOHN A. CHILDRESS,  
Clerk;

By /s/ WM. A. WHITE,  
Deputy Clerk.



In the United States Court of Appeals  
For the Ninth Circuit

No. 16521

ELIZABETH B. JOHNSON,

Appellant,

vs.

CHARLES B. MacCOY,

Appellee.

APPELLANT'S STATEMENT OF POINTS  
AND DESIGNATION OF RECORD  
(Rule 17(6), Rules, Court of Appeals,  
Ninth Circuit)

To the Court of Appeals for the Ninth Circuit:

The points upon which appellant intends to rely are:

1. The District Court erred in granting the defendant-appellee's motion to dismiss the complaint.

Appellant designates the following portions of the record herein as being material to this appeal and for printing:

1. The Complaint;
2. Notice of Motion to Dismiss;
3. Order on Motion to Dismiss; and
4. Judgment of Dismissal.
5. Notice of Appeal.

Dated: June 29, 1959.

/s/ MARVIN ZINMAN,  
Attorney for Appellant.

[Endorsed]: Filed June 30, 1959.

[Endorsed]: No 16521. United States Court of Appeals for the Ninth Circuit. Elizabeth B. Johnson, Appellant, vs. Charles B. MacCoy, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed June 19, 1959.

Docketed: June 30, 1959.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.